

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 22-1256V

JACQUELINE CROUSE,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: April 11, 2024

Daniel Alholm, Alholm Law P.C., Chicago, IL, for Petitioner.

Alec Saxe, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEY'S FEES AND COSTS¹

On September 7, 2022, Jacqueline Crouse filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, et seq.² (the "Vaccine Act"). Petitioner alleged that she suffered from a shoulder injury related to vaccine administration as a result of receiving a tetanus, diphtheria, and acellular pertussis vaccine on August 11, 2020. Petition, ECF No. 1. On February 12, 2024, I issued a decision awarding compensation to Petitioner based on the Respondent's proffer. ECF No. 35.

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

Petitioner has now filed a motion for attorney's fees and costs, requesting an award of \$42,194.78 (representing \$40,125.00 in fees plus \$2,069.78 in costs). Petitioner's Application for Fees and Costs ("Motion"), filed Feb. 16, 2024, ECF No. 40. Petitioner also filed a signed statement representing that she had incurred no personal out-of-pocket expenses. ECF No. 40-4.

Respondent reacted to the Fees Motion on Mar. 1, 2024, reporting that he is satisfied that the statutory requirements for an award of attorney's fees and costs are met in this case, but deferring resolution of the amount to be awarded to my discretion. Respondent's Response to Motion at 2-3, ECF No. 41. On Mar. 1, 2024, Petitioner indicated that she does not intend to file a substantive reply. ECF No. 42.

I have reviewed the billing records submitted with Petitioner's requests and find a reduction in the amount of fees to be awarded appropriate, for the reasons listed below.

ANALYSIS

The Vaccine Act permits an award of reasonable attorney's fees and costs to successful claimants. Section 15(e). Counsel must submit fee requests that include contemporaneous and specific billing records indicating the service performed, the number of hours expended on the service, and the name of the person performing the service. See *Savin v. Sec'y of Health & Human Servs.*, 85 Fed. Cl. 313, 316-18 (2008). Counsel should not include in their fee requests hours that are "excessive, redundant, or otherwise unnecessary." *Saxton v. Sec'y of Health & Human Servs.*, 3 F.3d 1517, 1521 (Fed. Cir. 1993) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983)). It is "well within the special master's discretion to reduce the hours to a number that, in [her] experience and judgment, [is] reasonable for the work done." *Id.* at 1522. Furthermore, the special master may reduce a fee request *sua sponte*, apart from objections raised by respondent and without providing a petitioner notice and opportunity to respond. See *Sabella v. Sec'y of Health & Human Servs.*, 86 Fed. Cl. 201, 209 (2009). A special master need not engage in a line-by-line analysis of petitioner's fee application when reducing fees. *Broekelschen v. Sec'y of Health & Human Servs.*, 102 Fed. Cl. 719, 729 (2011).

The petitioner "bears the burden of establishing the hours expended, the rates charged, and the expenses incurred." *Wasson v. Sec'y of Health & Human Servs.*, 24 Cl. Ct. 482, 484 (1991). The Petitioner "should present adequate proof [of the attorney's fees and costs sought] at the time of the submission." *Wasson*, 24 Cl. Ct. at 484 n.1. Petitioner's counsel "should make a good faith effort to exclude from a fee request hours that are excessive, redundant, or otherwise unnecessary, just as a lawyer in private

practice ethically is obligated to exclude such hours from his fee submission." *Hensley*, 461 U.S. at 434.

ATTORNEY FEES

The rates requested for work performed through the end of 2023 are reasonable and consistent with our prior determinations, and will therefore be adopted herein. Petitioner has also requested the hourly rate of \$475 for 2024 work performed by attorney Daniel Alholm, representing a rate increase of \$25. ECF No. 40-1 at 3. I find the requested rate to be reasonable. However, the overall fees to be awarded must still be reduced.

Billing records show 16.40 hours³ of entries that are more properly characterized as paralegal tasks, including requesting medical records, following up with medical records providers, preparing exhibits and filing documents. Attorneys may be compensated for paralegal-level work, but only at a rate that is comparable to what would be paid for a paralegal. See, e.g. *Doe/11 v. Sec'y of Health & Human Servs.*, No. XX-XXXV, 2010 WL 529425, at *9-10 (Fed. Cl. Spec. Mstr. Jan. 29, 2010) (citing *Missouri v. Jenkins*, 491 U.S. 274, 288 (1989)); *Mostovoy v. Sec'y of Health & Human Servs.*, No. 02-10V, 2016 WL 720969, at *5 (Fed. Cl. Spec. Mstr. Feb. 4, 2016); *Riggins. v. Sec'y of Health & Human Servs.*, No. 99-382V, 2009 WL 3319818, at *20-21 (Fed. Cl. Spec. Mstr. June 15, 2009); *Turpin v. Sec'y of Health & Human Servs.*, No. 99-535, 2008 WL 5747914, at *5-7 (Fed. Cl. Spec. Mstr. Dec. 23, 2008).

Accordingly, I hereby reduce Attorney Alholm's hourly rate for all tasks considered paralegal in nature to \$165 per hour. Application of the foregoing reduces the amount of fees to be awarded herein by **\$4,269.00**.⁴

ATTORNEY COSTS

Petitioner requests \$2,069.78 in overall costs. ECF No. 40-3. This amount is comprised of obtaining medical records and the Court's filing fee. I have reviewed all of the requested costs and find them to be reasonable and shall award them in full.

³ Examples of tasks considered paralegal in nature: 7/7/22: "Attempted to get info on missing records..." 7/11/22: "Review records status report from LCS." 7/12/22: "Receive and Review e-mail from LCS about Mercy Hospital Records." 8/19/22 (two entries re: records requests); 8/22/22; 8/30/22; 9/2/22; 10/6/22; 10/7/22; 10/11/22; 10/12/22 (three entries re: records from Oklahoma University); 10/24/22; 10/26/22; 2/16/24. See ECF No. 40-2.

⁴ This amount consists of: (\$425 - \$165 = \$260 x 16.30 hrs.) + (\$475 - \$165 = \$310 x 0.10 hrs.) = \$4,269.00.

CONCLUSION

The Vaccine Act permits an award of reasonable attorney's fees and costs for successful claimants. Section 15(e). Accordingly, I hereby GRANT in part Petitioner's Motion for attorney's fees and costs. I award a total of **\$37,925.78 (representing \$35,856.00 in fees plus \$2,069.78 in costs) as a lump sum in the form of a check jointly payable to Petitioner and Petitioner's counsel, Daniel Alholm.** In the absence of a timely-filed motion for review (see Appendix B to the Rules of the Court), the Clerk of Court shall enter judgment in accordance with this Decision.⁵

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

⁵ Pursuant to Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing their right to seek review.